

REMARKS / ARGUMENTS

The present application includes pending claims 1-28, of which claims 1-25 have been rejected. The Applicant has added new claims 26-28. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent No. 6,032,194 issued to Gai et al. (hereinafter, Gai), in view of U.S. Patent Application Publication 2004/0047320, by Eglin, (hereinafter, Eglin), and U.S. Patent Publication No. 2006/0234678, by Juitt et al. (hereinafter Juitt). The Applicant respectfully traverses these rejections at least for the reasons previously set forth during prosecution and at least based on the following remarks.

REJECTION UNDER 35 U.S.C. § 103

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure ("MPEP") states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. . . "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See MPEP at § 2142. Further, MPEP § 2143.01(III) states that "the mere fact that references can be combined or modified does not render the resultant combination

obvious unless the results would have been predictable to one of ordinary skill in the art." Moreover, MPEP § 2143.01(IV) also states that the level of ordinary skill in the art cannot be relied upon to show a *prima facie* case of obviousness. Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness.

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

I. The proposed combination of Gai, Eglin, and Juitt does not render claims 1-25 unpatentable

The Applicant now turns to the rejection of claims 1-25 as being unpatentable over Gai in view of Eglin and Juitt. The Applicant notes that the proposed combination of Gai, Eglin, and Juitt forms the basis for all of the pending rejections.

A. The proposed combination of Gai, Eglin, and Juitt does not render claim 1 obvious.

The Applicant first turns to the rejection of claim 1. Claim 1 has been amended, and is not anticipated by Gai, Eglin and/or Juitt, alone or in combination.

B. The proposed combination does not disclose the claim limitation "determining, based on at least bandwidth-related information, at least one available switch port having a

capability to handle first local area network, said first local area network having a first default switch port”

The Applicant submits that the combination of Gai, Eglin, and Juitt does not disclose at least the amended limitation of “determining, based on at least bandwidth-related information, at least one available switch port having a capability to handle first local area network, said first local area network having a first default switch port,” as recited by the Applicant in independent claim 1. More specifically, Gai does not teach “determining, based on at least bandwidth-related information, at least one available switch port having a capability to handle first local area network.”

Additionally, the Examiner states in the Office Action (page 4) that Gai does not specifically disclose a hybrid wired/wireless local area network, as called for in independent claim 1 by the Applicant. The Applicant respectfully agrees.

The Applicant therefore respectfully submits that Gai, alone or in combination with Eglin and/or Juitt, cannot teach, nor suggest “determining, based on at least bandwidth-related information, at least one available switch port having a capability to handle first local area network, said first local area network having a first default switch port,” such as recited in amended claim 1.

Moreover, the Office Action of February 6 states that Juitt discloses “a method for managing data traffic in wireless networks wherein a WLAN comprising a group of access points is connected to a port which can be transferred if a fault occurs.” For support, the Office Action refers to Juitt, FIG. 1A and FIG. 7 -

Abstract; Page 3, Paragraph 0023; Page 9, Paragraph 0081; Page 12, Claim 44. Without conceding that Juitt qualifies as prior art to the present application, the Applicant will address the Examiner's reliance on Juitt.

First, the Applicant notes that Juitt was filed on March 8, 2006 as a continuation of U.S. Patent 7,042,988 by Juitt et al. (herein Juitt-Parent), filed on September 27, 2002. Hence Juitt relies on Juitt-Parent's filing date to qualify as prior art (if it qualifies as prior art at all). While Juitt reproduces FIG. 1A and FIG. 7 - Abstract; Page 3, Paragraph 0023; Page 9, Paragraph 0081 identically from Juitt-Parent, Claim 44 in Juitt is not identical to similar claims in Juitt-Parent. The Applicant remarks that the Final Office Action did not address the above comment, first made in the response to the Office Action mailed on February 6, 2008.

Second, in contrast to the Office Action of February 6, 2008 that states "a WLAN comprising a group of access points," FIG. 1A and FIG. 7 do depict Access Points that are not comprised in WLAN 105. The Abstract, and the cited paragraphs; Page 3, Paragraph 0023; Page 9, Paragraph 0081; and Claim 44 in Juitt do not support "WLAN comprising a group of access points" as stated in the Office Action. In the Final Office Action, the examiner again relies on the same references in Juitt and states that "it is clear that the access point group (Fig. 7, 102a-102c) are a group of access points supported by the WLAN." The Applicant reiterates, however, that what the Examiner asserts about Juitt is actually not clear, and that the Final Office Action statement is conclusory. The Applicant

respectfully resubmits that there is no support for the statement made in the Final Office Action.

Moreover, the Office Action of February 6, 2008 states that "group of access points is connected to a port which can be transferred if a fault occurs." The Office Action refers for support to Juitt, FIG. 1A and FIG. 7 - Abstract; Page 3, Paragraph 0023; Page 9, Paragraph 0081, and Claim 44. As illustrated in FIG. 1A, FIG. 7, and described in paragraph 0023, 0081 and Claim 44, Juitt states that **gateway servers** are connected to the fail-over port 900/interface, and **not access points** as stated in the Office Action on page 4. Furthermore, paragraph 0023 and paragraph 0081 state that when "a fall-over occurs and one of the back-up servers takes over," a switching of the gateway servers occurs. In Juitt's Claim 44, no mention is made of any actions that may take place in case of fault. Moreover, as stated above, no mention of "transferring a port" is made, contrary to the statement in Office Action. Therefore, in summary, Juitt discloses switching of **gateway servers** and not of **ports**, as claimed in the Office Action of February 6, 2008 on page 4, and the ports (which are not switched) are not connected to access points. The Applicant notes that the Final Office Action does not discuss the above argument made by the Applicant and states only that "The examiner respectfully disagrees. The Gateway servers are connected to access point groups (Fig. 7)." The Applicant respectfully notes that this statement is entirely conclusory, and does not at all address the detailed comments made by the

Applicant in the Office Action of February 6, 2008, and restated above.

Thus, there is no reference to switch **ports** that provide service to a first access point group, as claimed in the Applicant's claim limitation. Since the statement in the Office Action of February 6, 2006, pages 4-5, regarding Juitt as shown above is not supported by Juitt, the Applicant contends that the statement does not read on the Applicant's claim limitation. Specifically, even if the Office Action statement regarding Juitt was supported in Juitt, which the Applicant respectfully submits that it is not, the Applicant fails to see how it is relevant to the Applicant's claim 1. The Applicant refers to MPEP §2142 which requires that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." The Applicant notes that the above remarks were not addressed in the Final Office Action.

Moreover, the Applicant further notes that the Office Action has not made an attempt at a "functional approach" using, for example, the *Graham* factors to make the obviousness rejection explicit, as required under MPEP §2143.

Accordingly, the proposed combination of Gai, Eglin, and Juitt does not render independent claim 1 unpatentable, and a *prima facie* case of obviousness has not been established. The Applicant submits that claim 1 is allowable.

Amended independent claims 9 and 17 are similar in many respects to the method disclosed in independent claim 1. Therefore, the Applicant submits that

independent claims 9 and 17 are also allowable over the references cited in the Office Action at least for the reasons stated above with regard to claim 1.

B. Rejection of Dependent Claims 2-8, 10-16 and 18-25

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1, 9 and 17 under 35 U.S.C. § 103(a) as being anticipated by Gai in view of Eglin, and Juitt has been overcome and request that the rejection be withdrawn. Additionally, claims 2-8, 10-16 and 18-25 depend from independent claims 1, 9 and 17, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1-25.

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CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-25 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and request that the Examiner telephone the undersigned Attorney at (312) 775-8105.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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